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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO	
09/985,852	11/06/2001	Koji Utsugi	Q67040	4392	
7590 01/28/2004			EXAMINER		
SUGHRUE, N	MION, ZINN, MACPE	WEINER, LAURA S			
2100 Pennsylvania Avenue, N.W. Washington, DC 20037-3202			ART UNIT	PAPER NUMBER	
washington, D	20037-3202		1745		
			DATE MAILED: 01/28/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Examiner		Application No.	Applicant(s)	,				
Laurs S Weiner	ત્ર	09/985,852	UTSUGI ET AL					
	Office Action Summary	Examiner	Art Unit					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALLING DATE OF THIS COMMUNICATION  - Experiment of MONTHS from the medited their produced of 3 CPR 1 13 (s). In no event, become, may a nophy he timely titled  - Experiment of MONTHS from the medited their observation of 3 CPR 1 13 (s).  - If the posted for reply is pecified above, the maintain statutory produced with a produced to the								
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1)	THE MAILING DATE OF THIS COMMUN  - Extensions of time may be available under the provisions after SIX (6) MONTHS from the mailing date of this community of the period for reply specified above is less than thirty (3 lf NO period for reply is specified above, the maximum simulation of the period for reply within the set or extended period for reply Any reply received by the Office later than three months earned patent term adjustment. See 37 CFR 1.704(b).	ICATION.  s of 37 CFR 1.136(a). In no event, howen nunication.  30) days, a reply within the statutory minulatiory period will apply and will expire the application to the statutory period will apply and will expire the application to the statutory of the application to the statutory of the application to the statutory of the s	ever, may a reply be timely filed  nimum of thirty (30) days will be considered to SIX (6) MONTHS from the mailing date of the page 48400000000000000000000000000000000000					
2a)  This action is FINAL. 2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-25 is/are pending in the application. 4a) Of the above claim(s) 6-19 and 21-24 is/are withdrawn from consideration.  5) Claim(s) 5 is/are allowed.  6) Claim(s) 1,2.20 and 25 is/are rejected.  7) Claim(s) 3 and 4 is/are objected to.  8) Claim(s) 1,2.20 and 25 is/are rejected.  7) Claim(s) 3 and 4 is/are objected to.  8) The specification is objected to by the Examiner.  Application Papers  9) The specification is objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. §§ 119 and 120  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  3) Acknowledgment is made of a claim for domestic priority documents have been received in Application No.  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  Altachment(s) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data		ed on 25 November 2003						
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Priority under 35 U.S.C. §§ 119 and 120  12)	Replacement drawing sheet(s) including	ng the correction is required if t	he drawing(s) is objected to. See 3	7 CFR 1.121(d).				
12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No.  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet.  37 CFR 1.78.  a) The translation of the foreign language provisional application has been received.  14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  Attachment(s)  1) Notice of References Cited (PTO-892)  4) Interview Summary (PTO-413) Paper No(s).  5) Notice of Informal Patent Application (PTO-152)	11) The oath or declaration is objected	to by the Examiner. Note th	e attached Office Action of form	1 PTO-152.				
a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No.  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet.  37 CFR 1.78.  a) The translation of the foreign language provisional application has been received.  14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  Attachment(s)  1) Notice of References Cited (PTO-892)  1) Notice of Draftsperson's Patent Drawing Review (PTO-948)  1) Notice of Informal Patent Application (PTO-152)								
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2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  5) Notice of Informal Patent Application (PTO-152)		-	7	v No(c)				
	2) Notice of Draftsperson's Patent Drawing Review	(PTO-948) 5) [	Notice of Informal Patent Application					

Application/Control Number: 09/985,852

Art Unit: 1745

#### **DETAILED ACTION**

#### Election/Restrictions

- 1. Applicant's election without traverse of Invention I, species I, claims 1-5, 20, 25 in Paper No. 5 is acknowledged.
- Claims 6-19, 21-24, are withdrawn from further consideration pursuant to 37 CFR
   1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 5.

### Response to Arguments

**3.** Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

## Claim Rejections - 35 USC § 112

4. Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 is rejected because the claim is drawn to a method but it is unclear what are the method steps. The only method step as written is "forming an anode...".

Application/Control Number: 09/985,852

Art Unit: 1745

Claim Rejections - 35 USC § 102 Claim Rejections - 35 USC § 103

7. Claims 1-2, 20, 25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Katsumata (JP 8-250108, translation and abstract).

Katsumata teaches a lithium secondary battery comprising a positive electrode and a negative electrode comprising a metal foil consisting of metal lithium or lithium aluminum alloy which is left under an argon gas atmosphere containing a small amount of hydrogen fluoride to form a lithium fluoride film on the metal foil surface.

In the event any differences can be shown for the product of the product by process claim 1, as opposed to the product taught by Katsumata, such differences would have been obvious to one of ordinary skill in the art as a routine modification of the product in the absence of a showing of unexpected results. *In re Thrope 227 USPQ 964; (Fed. Cir. 1985)*.

With respect to the product by process claim 1, the determination of patentability is based upon the product itself not upon the method of its production. *In re Thrope 227 USPQ 964; In re Brown 173 USPQ 685; In re Bridgeford 149 USPQ 55; In re Wertheim 191 USPQ 90.* Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the Examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the Applicants to establish that their

Page 4

Application/Control Number: 09/985,852

Art Unit: 1745

product is patentably distinct. In re Brown 173 USPQ 685 and In re Fessmann 180

USPQ 324.

Allowable Subject Matter

5. Claims 3-4 are objected to as being dependent upon a rejected base claim, but

would be allowable if rewritten in independent form including all of the limitations of the

base claim and any intervening claims.

6. Claim 5 is allowed.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Laura S Weiner whose telephone number is 571-272-

1294. The examiner can normally be reached on M-F (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for

the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is 571-272-

1700.

Laura S Weiner

Primary Examiner

Art Unit 1745

January 22, 2004